

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

In re: Chapter 7

Megan Kurtz

Case No. 22-11903

Debtor.

Megan Kurtz,

Plaintiff,

Adversary No. _____ - cjf

vs.

United States Department of Education,

Great Lakes Educational Loan Services, Inc.,

SoFi Lending Corporation,

and

Higher Education Loan Authority of the State of Missouri
a/k/a Mohela,

Defendants.

COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT

Plaintiff, Megan Kurtz (hereinafter “Plaintiff”), by her attorneys, Fuhrman & Dodge, S.C.
by Attorney Jennifer M. Schank, hereby brings this Complaint against Defendants, and alleges as
follows:

JURISDICTION & VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. Secs. 1334 and 157(b).

2. Venue is proper pursuant to 28 U.S.C. § 1409 because this proceeding arises in and relates to a bankruptcy case pending in this district.
3. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).
4. Bankruptcy Rules 7001 (6), (7), and (9) require an action of this nature to be filed as an adversary proceeding.
5. Plaintiff consents to the entry of a final judgment by a United States Bankruptcy Court judge.
6. Plaintiff filed her petition for relief under Chapter 7 of the Bankruptcy Code on November 30, 2022 (the “Chapter 7 Case”).

INTRODUCTION

7. Plaintiff seeks to discharge student loan debts that Plaintiff owes Defendants pursuant to 11 U.S.C. §523(a)(8).

GENERAL ALLEGATIONS

8. Plaintiff Megan Kurtz is an adult resident of Wisconsin and unmarried individual who resides at 307 S. Holiday Drive, Waunakee, Wisconsin 53597-1225.
9. Plaintiff is a citizen of Wisconsin residing in the Western District of Wisconsin.
10. United States Department of Education (“DOE”) is a Department of the United States government with a principal office at 400 Maryland Avenue SW, Washington, D.C. 20202.
11. Upon information and belief, Great Lakes Educational Loan Services, Inc. (“Great Lakes”) is a non-profit corporation with a principal office at 2401 International Lane Madison, Wisconsin 53704.
12. Upon information and belief, SoFi Lending Corporation (“SoFi”) is a corporation with a principal office at 375 Healdsburg Avenue, Ste. 280, Healdsburg, CA 95448-4151.

13. Upon information and belief, Higher Education Loan Authority of the State of Missouri, a/k/a Mohela (“Mohela”) has a principal office at 633 Spirit Drive, Chesterfield, MO 63005-1243, and is a loan servicer for student loans, including student loans owned by SoFi.
14. Defendants are the owners, servicers, or guarantors of the student loans, which Plaintiff seeks to discharge.

The Student Loans

15. The outstanding balance of the student loans which Plaintiff seeks to discharge in this adversary proceeding was approximately \$81,093.00 at the time the underlying case was filed (plus accruing interest) (the “Student Loans”).
16. Upon information and belief, the outstanding balance of the Mohela student loan is approximately \$21,083.00.
17. Upon information and belief, the outstanding balance of the DOE student loan is approximately \$60,010.00.

Education

18. Plaintiff obtained student loans from DOE and Wells Fargo for the purpose of obtaining a Bachelor’s degree from Concordia University in St. Paul, Minnesota. Plaintiff attended Concordia University and graduated in 2011.
19. The student loan from Wells Fargo to Plaintiff was later refinanced and upon information and belief is owned by SoFi.
20. Plaintiff utilized student loans to pay tuition, living expenses, and costs of attending college.

21. After receiving her Bachelor's degree in Kinesiology, Plaintiff obtained employment but not within the field of her degree. Plaintiff was employed by Lifetime Fitness as Janitor, and subsequently was employed by Liberty Mutual doing insurance.

22. In 2017, Plaintiff obtained her current employment with Lincoln Financial in a role as a disability case manager.

23. In 2018, while working at Lincoln Financial, Plaintiff pursued a graduate degree at Grand Canyon University in Phoenix, Arizona.

24. Plaintiff received a graduate degree in Industrial Organizational Psychology in 2020.

Employment

25. Plaintiff has been gainfully employed since graduating undergraduate college in 2011, but not within the fields of her college degrees.

26. Plaintiff has searched for jobs within her desired field and where she could utilize her graduate degree. Such jobs include working for human resources departments.

27. Plaintiff has applied for approximately 75-100 jobs with human resources departments and within her field of education but has not been selected for any of these positions.

28. Plaintiff continues to be employed at the Lincoln National Life Insurance Company as a claims examiner.

Financial and Life Circumstances – Minimal Standard of Living

29. Plaintiff does not have the present ability to pay the Student Loans while maintaining a minimal standard of living for herself if forced to repay the Student Loans.

30. The Plaintiff's income and expenses are shown in the Plaintiff's bankruptcy schedules I and J, attached hereto and incorporate herein as Exhibit A.

31. Plaintiff's monthly household¹ living expenses exceed the standards as set forth by the Internal Revenue Service Collection Financial Standards (the "National Standards").
32. Plaintiff has resided with her mother since she moved from Arizona back to Wisconsin in 2022.
33. Plaintiff moved back to Wisconsin so that she could be closer in proximity to her family for health and financial reasons.
34. Plaintiff relies upon financial support from her mother, specifically that her mother requires her to pay only \$500 per month for rent.
35. On average, Plaintiff's monthly expenses exceed her monthly income.
36. Plaintiff works full-time and has been gainfully employed since earning her degrees.
37. Plaintiff's current monthly household expenses are minimal.
38. Plaintiff anticipates higher future expenses for housing and medical expenses than the amounts reflected on her bankruptcy schedules I and J.

Future Inability to Repay the Student Loans

39. Plaintiff's present inability to pay is likely to persist in the future preventing the Plaintiff from maintaining a minimal standard of living for a significant portion of the repayment period if forced to repay her loans.
40. Plaintiff suffered a stroke in May of 2022 at 33 years of age.
41. Plaintiff has been diagnosed with a rare blood disorder called Antiphospholipid syndrome ("APS"). APS is a condition in which the immune system mistakenly creates antibodies that attack tissues in the body. These antibodies can cause blood clots to form in arteries and veins.

¹ Plaintiff is a household of one under the National Standards.

42. Plaintiff was previously diagnosed with another blood disorder, Lupus Anticoagulants disorder, in 2010.

43. Further, Plaintiff has been diagnosed with bipolar disorder and suffers from manic episodes.

44. Plaintiff continues to suffer complications from her stroke, APS and bipolar disorder which will continue to require ongoing treatment.

45. The Plaintiff's medical treatments and care include the following:

- a. Frequent medical consultations with M.D.'s;
- b. Plaintiff has received Transcranial magnetic stimulation procedures to assist with her bipolar disorder;
- c. Plaintiff takes various Prescription drugs to stabilize her medical conditions; and
- d. Plaintiff has participated in an intensive out-patient program for her bipolar disorder.

46. Plaintiff's health conditions affect her overall ability to work and the effectiveness of her work. When Plaintiff suffers health flare ups, she misses work for weeks at a time.

47. Plaintiff has been unable to obtain employment in the fields in which she is educated in.

48. Plaintiff's income is unlikely to increase to an amount necessary to make sufficient payments on the Student Loans.

49. It is unlikely that Plaintiff could complete another degree or achieve a higher salary for doing so, given the costs of attending higher education together with her ongoing health issues.

50. Plaintiff owns modest personal belongings and owns no assets worth a significant amount.

Good Faith Effort to Repay

51. Plaintiff has made good faith efforts to earn income, manage expenses and repay the Student Loans.
52. Plaintiff has been employed since graduating in 2011.
53. Plaintiff has obtained employment outside the skillset of her Kinesiology and Psychology degrees in order to maximize her income.
54. Plaintiff has made voluntary payments on the Student Loans as they are due.
55. Upon information and belief, Plaintiff has never been in default on the Student Loans.
56. Plaintiff applied on four (4) separate occasions for payment deferments with Great Lakes/DOE.
57. Plaintiff participated in the Income Driven Repayment Program beginning in August of 2013.
58. Plaintiff has contacted DOE, Mohela and Great Lakes regarding payment options at least four (4) times.
59. Plaintiff moved back to Wisconsin and resides with her mother in order to minimize her expenses.

CLAIM FOR RELIEF – DETERMINATION OF DISCHARGEABILITY OF STUDENT LOAN OBLIGATIONS, 11 U.S.C. § 523(8))

60. Plaintiff hereby realleges and incorporate by reference the allegations set forth in paragraphs 1 through 59.
61. Plaintiff is entitled to discharge of the Student Loans owed to the Defendants in whole because repayment would constitute an “undue hardship” on her.
62. Further, Plaintiff meets the standard for discharge of the Student Loans under *Brunner v. New York State Higher Educ. Servs. Corp.* 831 F2d 395 (2d Cir. 1987).

WHEREFORE, Megan Kurtz, respectfully requests:

- a) Declaratory and injunctive relief;
- b) Determination of dischargeability;
- c) An order discharging the Student Loans in whole upon the Plaintiff receiving an Order of Discharge in the Chapter 7 Case; and
- d) All other such relief as the court deems just.

Dated this 26th day of February, 2023.

FUHRMAN & DODGE, S.C.
Attorneys for Megan Kurtz

/s/ Jennifer M. Schank
Jennifer M. Schank
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Email: jschank@fuhrmandodge.com

Fill in this information to identify your case:

Debtor 1 Megan Marie Kurtz

Debtor 2
(Spouse, if filing) _____

United States Bankruptcy Court for the: WESTERN DISTRICT OF WISCONSIN

Case number
(If known) _____

Check if this is:

- ☐ An amended filing
- ☐ A supplement showing postpetition chapter 13 income as of the following date:

MM / DD / YYYY

Official Form 106I

Schedule I: Your Income

12/15

Be as complete and accurate as possible. If two married people are filing together (Debtor 1 and Debtor 2), both are equally responsible for supplying correct information. If you are married and not filing jointly, and your spouse is living with you, include information about your spouse. If you are separated and your spouse is not filing with you, do not include information about your spouse. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Describe Employment

1. Fill in your employment information.

If you have more than one job, attach a separate page with information about additional employers.

Include part-time, seasonal, or self-employed work.

Occupation may include student or homemaker, if it applies.

Employment status

- ☒ Employed
- ☐ Not employed

Occupation

Senior Claims Examiner

Employer's name

The Lincoln National Life Insurance Co.

Employer's address

PO Box 21008
Greensboro, NC 27420-1008

How long employed there?

7 years

- ☐ Employed
- ☐ Not employed

Part 2: Give Details About Monthly Income

Estimate monthly income as of the date you file this form. If you have nothing to report for any line, write \$0 in the space. Include your non-filing spouse unless you are separated.

If you or your non-filing spouse have more than one employer, combine the information for all employers for that person on the lines below. If you need more space, attach a separate sheet to this form.

		For Debtor 1	For Debtor 2 or non-filing spouse
2. List monthly gross wages, salary, and commissions (before all payroll deductions). If not paid monthly, calculate what the monthly wage would be.	2. \$	<u>5,147.95</u>	\$ <u>N/A</u>
3. Estimate and list monthly overtime pay.	3. +\$	<u>0.00</u>	+\$ <u>N/A</u>
4. Calculate gross income. Add line 2 + line 3.	4. \$	<u>5,147.95</u>	\$ <u>N/A</u>

Exhibit A

Debtor 1 **Megan Marie Kurtz**

Case number (if known)

	For Debtor 1	For Debtor 2 or non-filing spouse
Copy line 4 here	4. \$ 5,147.95	\$ N/A
5. List all payroll deductions:		
5a. Tax, Medicare, and Social Security deductions	5a. \$ 1,086.83	\$ N/A
5b. Mandatory contributions for retirement plans	5b. \$ 0.00	\$ N/A
5c. Voluntary contributions for retirement plans	5c. \$ 255.46	\$ N/A
5d. Required repayments of retirement fund loans	5d. \$ 0.00	\$ N/A
5e. Insurance	5e. \$ 0.00	\$ N/A
5f. Domestic support obligations	5f. \$ 0.00	\$ N/A
5g. Union dues	5g. \$ 0.00	\$ N/A
5h. Other deductions. Specify: HSA	5h. \$ 133.65	\$ N/A
Medical Insurance	\$ 102.61	\$ N/A
AD&D Insurance	\$ 6.31	\$ N/A
Critical Illness Insurance	\$ 8.69	\$ N/A
Long Term Disability Insurance	\$ 16.27	\$ N/A
Supplemental Life Insurance	\$ 16.21	\$ N/A
Award Offset	\$ 25.00	\$ N/A
Dental Insurance	\$ 12.39	\$ N/A
6. Add the payroll deductions. Add lines 5a+5b+5c+5d+5e+5f+5g+5h.	6. \$ 1,663.42	\$ N/A
7. Calculate total monthly take-home pay. Subtract line 6 from line 4.	7. \$ 3,484.53	\$ N/A
8. List all other income regularly received:		
8a. Net income from rental property and from operating a business, profession, or farm Attach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income.	8a. \$ 0.00	\$ N/A
8b. Interest and dividends	8b. \$ 0.00	\$ N/A
8c. Family support payments that you, a non-filing spouse, or a dependent regularly receive Include alimony, spousal support, child support, maintenance, divorce settlement, and property settlement.	8c. \$ 0.00	\$ N/A
8d. Unemployment compensation	8d. \$ 0.00	\$ N/A
8e. Social Security	8e. \$ 0.00	\$ N/A
8f. Other government assistance that you regularly receive Include cash assistance and the value (if known) of any non-cash assistance that you receive, such as food stamps (benefits under the Supplemental Nutrition Assistance Program) or housing subsidies. Specify:	8f. \$ 0.00	\$ N/A
8g. Pension or retirement income	8g. \$ 0.00	\$ N/A
8h. Other monthly income. Specify:	8h. \$ 0.00	\$ N/A
9. Add all other income. Add lines 8a+8b+8c+8d+8e+8f+8g+8h.	9. \$ 0.00	\$ N/A
10. Calculate monthly income. Add line 7 + line 9. Add the entries in line 10 for Debtor 1 and Debtor 2 or non-filing spouse.	10. \$ 3,484.53 + \$ N/A	\$ 3,484.53
11. State all other regular contributions to the expenses that you list in Schedule J. Include contributions from an unmarried partner, members of your household, your dependents, your roommates, and other friends or relatives. Do not include any amounts already included in lines 2-10 or amounts that are not available to pay expenses listed in Schedule J. Specify:	11. +\$ 0.00	
12. Add the amount in the last column of line 10 to the amount in line 11. The result is the combined monthly income. Write that amount on the Summary of Schedules and Statistical Summary of Certain Liabilities and Related Data, if it applies	12. \$ 3,484.53	Combined monthly income
13. Do you expect an increase or decrease within the year after you file this form?		
<input checked="" type="checkbox"/> No.		
<input type="checkbox"/> Yes. Explain:		

Fill in this information to identify your case:

Debtor 1 Megan Marie Kurtz

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: WESTERN DISTRICT OF WISCONSIN

Case number _____
(If known)

Check if this is:

- ☐ An amended filing
- ☐ A supplement showing postpetition chapter 13 expenses as of the following date:

MM / DD / YYYY

Official Form 106J

Schedule J: Your Expenses

12/15

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach another sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Describe Your Household

1. Is this a joint case?

☒ No. Go to line 2.

☐ Yes. Does Debtor 2 live in a separate household?

☐ No

☐ Yes. Debtor 2 must file Official Form 106J-2, *Expenses for Separate Household* of Debtor 2.

2. Do you have dependents? ☒ No

Do not list Debtor 1 and Debtor 2.

☐ Yes. Fill out this information for each dependent.....

Dependent's relationship to Debtor 1 or Debtor 2

Dependent's age

Does dependent live with you?

Do not state the dependents names.

- ☐ No
☐ Yes
☐ No
☐ Yes
☐ No
☐ Yes
☐ No
☐ Yes

3. Do your expenses include expenses of people other than yourself and your dependents? ☒ No
☐ Yes

Part 2: Estimate Your Ongoing Monthly Expenses

Estimate your expenses as of your bankruptcy filing date unless you are using this form as a supplement in a Chapter 13 case to report expenses as of a date after the bankruptcy is filed. If this is a supplemental *Schedule J*, check the box at the top of the form and fill in the applicable date.

Include expenses paid for with non-cash government assistance if you know the value of such assistance and have included it on *Schedule I: Your Income* (Official Form 106I.)

Your expenses

4. The rental or home ownership expenses for your residence. Include first mortgage payments and any rent for the ground or lot.

4. \$ 500.00

If not included in line 4:

4a. Real estate taxes

4a. \$ 0.00

4b. Property, homeowner's, or renter's insurance

4b. \$ 0.00

4c. Home maintenance, repair, and upkeep expenses

4c. \$ 0.00

4d. Homeowner's association or condominium dues

4d. \$ 0.00

5. Additional mortgage payments for your residence, such as home equity loans

5. \$ 0.00

Debtor 1 **Megan Marie Kurtz**

Case number (if known)

6. Utilities:								
6a. Electricity, heat, natural gas	6a. \$	<u>0.00</u>						
6b. Water, sewer, garbage collection	6b. \$	<u>0.00</u>						
6c. Telephone, cell phone, Internet, satellite, and cable services	6c. \$	<u>200.00</u>						
6d. Other. Specify: _____	6d. \$	<u>0.00</u>						
7. Food and housekeeping supplies	7. \$	<u>550.00</u>						
8. Childcare and children's education costs	8. \$	<u>0.00</u>						
9. Clothing, laundry, and dry cleaning	9. \$	<u>250.00</u>						
10. Personal care products and services	10. \$	<u>200.00</u>						
11. Medical and dental expenses	11. \$	<u>400.00</u>						
12. Transportation. Include gas, maintenance, bus or train fare. Do not include car payments.	12. \$	<u>300.00</u>						
13. Entertainment, clubs, recreation, newspapers, magazines, and books	13. \$	<u>150.00</u>						
14. Charitable contributions and religious donations	14. \$	<u>0.00</u>						
15. Insurance. Do not include insurance deducted from your pay or included in lines 4 or 20.								
15a. Life insurance	15a. \$	<u>0.00</u>						
15b. Health insurance	15b. \$	<u>0.00</u>						
15c. Vehicle insurance	15c. \$	<u>80.00</u>						
15d. Other insurance. Specify: _____	15d. \$	<u>0.00</u>						
16. Taxes. Do not include taxes deducted from your pay or included in lines 4 or 20. Specify: _____	16. \$	<u>0.00</u>						
17. Installment or lease payments:								
17a. Car payments for Vehicle 1	17a. \$	<u>535.00</u>						
17b. Car payments for Vehicle 2	17b. \$	<u>0.00</u>						
17c. Other. Specify: <u>Student loan payments</u>	17c. \$	<u>173.00</u>						
17d. Other. Specify: _____	17d. \$	<u>0.00</u>						
18. Your payments of alimony, maintenance, and support that you did not report as deducted from your pay on line 5, Schedule I, Your Income (Official Form 106I).	18. \$	<u>0.00</u>						
19. Other payments you make to support others who do not live with you. Specify: _____	\$	<u>0.00</u>						
20. Other real property expenses not included in lines 4 or 5 of this form or on Schedule I: Your Income.								
20a. Mortgages on other property	20a. \$	<u>0.00</u>						
20b. Real estate taxes	20b. \$	<u>0.00</u>						
20c. Property, homeowner's, or renter's insurance	20c. \$	<u>0.00</u>						
20d. Maintenance, repair, and upkeep expenses	20d. \$	<u>0.00</u>						
20e. Homeowner's association or condominium dues	20e. \$	<u>0.00</u>						
21. Other: Specify: <u>Miscellaneous subscriptions/gym membership/pet supplies</u>	21. +\$	<u>150.00</u>						
22. Calculate your monthly expenses								
22a. Add lines 4 through 21.	<div style="border: 1px solid black; padding: 5px;"> <table border="0"> <tr> <td>\$</td> <td><u>3,488.00</u></td> </tr> <tr> <td>\$</td> <td></td> </tr> <tr> <td>\$</td> <td><u>3,488.00</u></td> </tr> </table> </div>		\$	<u>3,488.00</u>	\$		\$	<u>3,488.00</u>
\$			<u>3,488.00</u>					
\$								
\$	<u>3,488.00</u>							
22b. Copy line 22 (monthly expenses for Debtor 2), if any, from Official Form 106J-2								
22c. Add line 22a and 22b. The result is your monthly expenses.								
23. Calculate your monthly net income.								
23a. Copy line 12 (your combined monthly income) from Schedule I.	23a. \$	<u>3,484.53</u>						
23b. Copy your monthly expenses from line 22c above.	23b. -\$	<u>3,488.00</u>						
23c. Subtract your monthly expenses from your monthly income. The result is your <i>monthly net income</i> .	23c. \$	<u>-3.47</u>						
24. Do you expect an increase or decrease in your expenses within the year after you file this form? For example, do you expect to finish paying for your car loan within the year or do you expect your mortgage payment to increase or decrease because of a modification to the terms of your mortgage?								
<input checked="" type="checkbox"/> No.								
<input type="checkbox"/> Yes. Explain here:								